

STATE WATER RESOURCES CONTROL BOARD

**In the matter of Administrative Civil
Liability Complaint issued against G. Scott
Fahey and Sugar Pine Spring Water, LP**

**Declaration of Samuel Cole in Support of
Prosecution Team's Case in Chief**

I, Samuel Cole, declare as follows:

1. My testimony, herein provided, identifies my personal knowledge of the evidence, actions, and rationale for the recommendation of the Division of Water Rights (Division) to issue an Administrative Civil Liability (ACL) Order and Cease and Desist Order (CDO) against G. Scott Fahey and Sugar Pine Spring Water, LP (referred to collectively hereafter as Fahey).
2. I am a Water Resources Control Engineer employed at the State Water Resources Control Board (State Water Board) and licensed as a Professional Engineer in the state of California. My duties at the State Water Board include protecting the surface waters of the State of California through the inspection, investigation, analysis and enforcement of unauthorized diversions according to the Water Code. A copy of my CV is attached hereto as Exhibit WR-14.
3. I initially became involved in the investigation into Fahey's potential unauthorized diversion when I was asked to provide investigative assistance in the form of video surveillance of the diversion facility. I was asked by my senior, Taro Murano, to provide evidence that would provide a definitive determination as to whether unauthorized diversions were taking place at Fahey's property in violation of the curtailment and his permit. The investigation was prompted by: Fahey's failure to respond to Division Staff's request for curtailment inspections, as well as Fahey's response to the Notice of Unavailability issued by the State Water Board on June 1, 2015, which indicated that Fahey may be continuing his diversions.
4. My understanding of Fahey's diversion facility, based on reviewing the application files, is that water was originally piped from two springs, permitted by A029977 in 1995, at a rate of 0.031 cubic feet per second (annual limit of 44.82 acre-feet). The two points of diversion are tied together via a single pipeline which runs to a 16,500 gallon underground storage tank at a bulk water filling station. In 2011, permit 20784 was issued (application A031491) authorizing two additional officially unnamed springs referred to as Marco and Polo springs at a rate of 0.045 cubic feet per second per spring with an annual limit of 64.5 acre-feet. These additional springs are piped over and merged into the existing pipeline. The original 16,500 gallon tank at the tanker fill station was reportedly changed at one point to two 35,000 gallon tanks according to an article published November 25, 2011 by the Union Democrat.
5. My role in the investigation encompassed the following actions: onsite investigation and observation of the diversion facilities, as well as deploying and retrieving surveillance equipment and analyzing data from said equipment. On July 12, 2015 I visited Fahey's

Declaration of Samuel Cole
G. Scott Fahey and Sugar Pine Spring Water, LP

diversion facility accompanied by Michael Vella, an environmental scientist at the State Water Board.

6. The transfer facility is located about six miles northeast of the town of Tuolumne. The springs that are the source of water and points of diversion under Permits 20784 and 21289 are located about three miles further to the east-northeast. I reached the front entrance of the diversion facility by driving on Cottonwood Road, which becomes Forest Route 1N04. A map of the properties is attached as Exhibit WR-45.
7. During my July 12, 2015 visit to the diversion facility, my investigation was restricted to Cottonwood Road, along with the public right of way, and the front gravel access road that led to the facility due to a locked gate that prevented me from entering. The goal of the July 12, 2015 visit was to deploy surveillance equipment along the public road to collect data that would help determine whether Fahey's diversion was ongoing. During the time that I was deploying the surveillance equipment, I observed a large quantity of what appeared to be fresh dust tracking from the front gate of the facility onto the public road. The dust appeared to be tracked from large vehicles entering and exiting the diversion facility, through the front gate.
8. On July 24, 2015 I drafted a Report of Inspection detailing my July 12, 2015 inspection. The Report of Inspection is attached hereto as Exhibit WR-49. The conclusion of the report is that there is an ongoing threat of unauthorized diversion. This conclusion was based on: 1) Fahey's initial avoidance in complying with the request for inspection of the diversion facility, as well as the physical evidence of the soil tracking to and from the entrance of the diversion facility.
9. To more fully understand the potential unauthorized diversion, I decided that placing cameras outside the facility gates was necessary. To accomplish this, I utilized the Division's surveillance equipment: two Brinno TLC 200 Pro cameras and one Brinno TLC 200 camera. The cameras are fully self-contained, time lapse units that snap a series of photographs at pre-determined intervals and compile the images into a seamless video file until the unit is manually shut off, runs out of battery charge, or reaches the digital memory storage capacity.
10. The TLC 200 Pro time-lapse cameras have wide-angle lenses which work well for increasing field of view, but at the sacrifice of detail. I selected these cameras for placement at the two locations closest to the access road. I placed one TLC 200 Pro at the base of a tree right where the gravel access road meets Cottonwood Road with the intention of collecting license plates and/or logos or other close-up details on the trucks. I placed the other TLC 200 Pro on the opposite side of Cottonwood Road in a publically accessible turnout at the base of a rock. The third camera, the TLC 200, has a standard, non-wide angle lens, which is useful for collecting data at a further distance with a narrower field of view. I placed it in a tree branch I accessed from the shoulder of cottonwood road north of the facility approximately 100 feet northwest of the gravel access road. I placed this camera as a redundant measure to capture any tanker trucks coming down the road and entering the gravel facility access road that the first two cameras may have missed.
11. On July 23, 2015 I visited the facility and retrieved the camera information. While traveling on Cottonwood Road, about 5 miles from the diversion facility, I observed two tanker trucks apparently leaving the facility. While parked across from the site, a third tanker truck arrived at the diversion facility at approximately 12:15PM. I observed this truck directly entering the

Declaration of Samuel Cole
G. Scott Fahey and Sugar Pine Spring Water, LP

diversion facility through the locked gate. At approximately 12:55PM, the tanker truck was directly observed leaving the transfer station through the locked gate. At approximately 1:06PM, I observed another tanker truck entering the station. I finished retrieving the surveillance equipment data before this truck had left the transfer station, and left before observing the fourth tanker truck leave the diversion facility

12. I briefly reviewed the video footage in the field to verify whether any activity was collected on the cameras, whether proper settings were used, and proper camera placement. The videos confirmed that tanker trucks were entering and exiting the property, presumably diverting water. After review of the footage, some trucks exiting before dawn indicated that there may be some night activity going on, so I changed the settings to "Night" and the turned off the "daylight-only" sensor in an effort to collect night images. I removed the camera mounted in the tree as the data was not useful from that location. The other two camera locations remained in use.
13. The only consistently useful data was the data from the "rock Camera." Its data consisted of 8 video files with a total combined file size of 17.4 GB, approximately 191,466 images or 11.08 days of recorded time for this period. The video surveillance data pulled from the cameras is attached as Exhibit WR-83 through WR-147.
14. After my second visit on July 23, 2015 to the facility I generated a second Report of Inspection. My report is attached as Exhibit WR-50. The conclusion of my report was that diversions appear to be continually occurring and night surveillance would be necessary due to trucks being captured exiting without having been captured entering the facility.
15. On August 5, 2015, I collected the SD cards that were used in the surveillance equipment that was deployed on July 23, 2015. I also put new batteries in the surveillance equipment. I briefly reviewed the video footage in the field to verify proper settings were used and proper positioning. Two TLC 200 Pro cameras were deployed. Of the three original locations, only the rock camera remains. The second location was placed near the rock location. One camera was set up for night filming, the other for day. I installed new SD cards and batteries to allow continued surveillance of the location described above.
16. While on site, I observed one tanker truck with Arrowhead logos at approximately 11:30AM, 5 miles from the transfer station having just left the diversion facility, which was later confirmed by surveillance footage. I observed the truck while I was en route to the transfer station to maintain the surveillance equipment. While parked across from the site, a second tanker truck left the transfer station at approximately 11:45AM. I visibly observed this truck directly leaving the transfer station through the locked gate. At approximately 12:36PM, a third tanker truck was directly observed arriving at the transfer station through the locked gate. I finished deploying surveillance equipment and left the facility before this truck had left the transfer station.
17. I used the data collected up to this point for preparing the Draft Cease and Desist Order with the assistance of Division Counsel.
18. On August 27, 2015, I collected the surveillance equipment that was last deployed on August 5, 2015. No footage was reviewed on site and no settings were adjusted because the surveillance was to be discontinued from this point forward. While on site, staff observed no tanker truck activity. Measurements of both cameras were taken from the cameras to both the edge and center of the road for documentation purposes.

Declaration of Samuel Cole
G. Scott Fahey and Sugar Pine Spring Water, LP

19. In preparation for the hearing, I developed various exhibits including maps and tables. I developed a total of 6 maps including 3 different scales, each with a quad map background and satellite imagery sourced from NAIP. The maps are attached as Exhibit WR-45. I developed a table of the Surveillance Data, on a daily basis documenting date, number of loads and volume. I developed two tables of the surveillance data on a Load basis, documenting date, time tanker arrived, time tanker departed and total tanker loads. One of these tables was for the period of July 12, 2015 to August 5, 2015, while the other table was for the period of August 5, 2015 to August 27, 2015. Due to the complexity and quantity of the video files that were collected, I renamed the video files and developed a table of Video File Exhibit Names and Attributes that tabulates and indexes these files documenting Exhibit #, video file name, deployment date, original file name, video recording start and end date and time, duration of time period observed in the recording and file size. These tables are attached as Exhibit WR-53.
20. I contacted G. Scott Fahey on August 12, 2015 to schedule a curtailment inspection. Fahey said he received a letter from the Division dated July 15, 2015 lifting the curtailment. I explained that the letter did not lift curtailment, but revised the language changing it from an order to a notice of water unavailability. He also discussed the letter he mailed the Division explaining why he believed his diversion to be exempt from the curtailment. I informed Mr. Fahey that the curtailment was still in effect and that he was not exempt. A copy of the notes taken immediately following the August 12, 2015 phone call is attached hereto as Exhibit WR-6.

I declare under penalty of perjury to the laws of the State of California that the foregoing is true and correct. Executed this 15th day of December 2015, at Sacramento, California.


Samuel Cole